



TLDEF, Harvard Law School LGBTQ+ Advocacy Clinic, and Athlete Ally Submit Public Comment on Title IX Athletics

The Transgender Legal Defense & Education Fund (TLDEF), Harvard Law School LGBTQ+ Advocacy Clinic, and Athlete Ally submitted a comment on the proposed rule changes to Title IX, released on April 6.

May 15, 2023 — Today, the Transgender Legal Defense & Education Fund (TLDEF), Harvard Law School LGBTQ+ Advocacy Clinic, and Athlete Ally submitted a comment on the [proposed rule changes to Title IX](#), released on April 6.

The proposed rule affirms that it is illegal for schools to broadly ban transgender, nonbinary and intersex students from sports teams that align with their gender identity, rather than their assigned sex at birth. However, we are concerned that the proposed rule, as written, does not provide sufficient clarity to prevent bad actors from attempting to limit the participation of some transgender, nonbinary and intersex athletes based on impermissible sex- and race-based stereotypes.

TLDEF, Harvard Law School LGBTQ+ Advocacy Clinic, and Athlete Ally submitted recommendations that the Department of Education clarify the rule by affirming the core principles that:

- Title IX's bar on sex discrimination encompasses nonbinary and intersex discrimination, as well as transgender discrimination;
- Transgender, nonbinary, and intersex students must be afforded a meaningful opportunity to participate in school athletics;
- Sex testing regulations must not be adopted or applied to student athletes;
- Sex-related athletics criteria must not be adopted or applied in ways that disproportionately target or harm students of color, including transgender, nonbinary, and intersex students, as well as students who do not conform to racialized gender norms.

"Opponents of transgender equality are perpetuating the myth that trans people – and specifically trans women and girls – are a threat to cis women and girls," the organizations wrote in their comment. "In reality, trans, nonbinary, and intersex students are some of the most vulnerable to sex discrimination and their inclusion is central—not in opposition—to the fulfillment of Title IX's promise of gender equality in school sport."

"The Department's proposed rule represents an important foray into protecting the rights of transgender, nonbinary, and intersex students in athletics under Title IX," **stated Alexander Chen, Founding Director of the Harvard Law School LGBTQ+ Advocacy Clinic.** "However, the Department's lack of engagement with the racialized history of gender-based policing in sports and the recurring deployment of false and pernicious stereotypes to deny the civil rights of racial and gender minorities threatens to reinscribe entrenched patterns of racism and sexism in the adoption and application of gender-based sports policies in our nation's schools."

"When laws or policies limit or deny transgender, nonbinary, or intersex ("TNI") students' ability to participate in school sports, they violate the plain text and purpose of Title IX," **said Shayna Medley, Senior Litigation Staff Attorney at the Transgender Legal Defense & Education Fund.** "TNI students already face immense barriers to equal access to education, including school sports, and are under attack by state legislatures. We urge the Department to make clear that TNI-inclusive policies are essential to – and never at odds with – Title IX's promise of gender equity and fairness."

"As we know first-hand from student-athletes in our network, participating in sport is a fundamental part of growing up and helping to shape the next generation of Americans into resilient, healthy adults," **said Anne Lieberman, Director of Policy & Programs for Athlete Ally.** "All students – including transgender, nonbinary and intersex students (TNI) – deserve to be included in sports. At a time when TNI youth are being weaponized for political gain, and their core humanity is challenged, it is even more important that the Department make clear that gender equity and fairness in sport includes TNI youth."

The comment submitted by TLDEF, Athlete Ally, and the Harvard LGBTQ+ Advocacy Clinic was also endorsed by the following signatories:

- April Haus, Inc.
- Beyond Binary Legal
- Center for Constitutional Rights
- InterACT Advocates for Intersex Youth
- The National Trans Bar Association
- Transathlete
- Transgender Law Center

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Founded in 2003, **TLDEF** is a 501(c)(3) nonprofit whose mission is to end discrimination and achieve equality for transgender people, particularly those in our most vulnerable communities. Our strategies include pathbreaking transgender rights cases and amicus curiae briefs regarding key issues of employment, health care, education, and public accommodations. Through this work, TLDEF has gained first-hand experience assisting transgender people who have experienced discrimination in schools and athletic programs, including through discriminatory bans and regulations.

The Harvard Law School LGBTQ+ Advocacy Clinic engages in cutting-edge impact litigation, legislative and policy advocacy, and public education on behalf of the LGBTQ+ community. The Clinic aims to shape the future of LGBTQ+ advocacy by focusing on advancing the rights of LGBTQ+ people as whole persons embedded in the wider fabric of society and their local communities, with a particular emphasis on issues affecting the most marginalized members of the LGBTQ+ community. The Clinic works with community members, advocates, non-profit organizations, educators, medical professionals, and governmental entities to advance the rights of LGBTQ+ people at both the national and local levels.

Athlete Ally believes sport will change the world when it welcomes and empowers all people. Founded in 2011, Athlete Ally's mission is to end homophobia and transphobia in sport and to activate the athletic community to exercise their leadership to champion LGBTQI+ equity. Athlete Ally works to dismantle the structural and systemic oppression that isolates, excludes and endangers LGBTQI+ people in sport through education, sport policy advocacy, research and athlete activism.

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